

Annex A

Declaration of Paul O'Brien (filed in conjunction with Oxfam America's Emergency Motion to Intervene as Respondent, or, in the Alternative, Motion for Leave to Participate as Amicus Curiae, *American Petroleum Institute v. SEC*, No. 12-1398, Dkt. No. 1401477 (D.C. Cir. Oct. 24, 2012))

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AMERICAN PETROLEUM INSTITUTE, *et al.*,

Petitioners,

v.

U.S. SECURITIES AND EXCHANGE
COMMISSION,

Respondents,

and

OXFAM AMERICA,

Proposed Intervenor-Respondent

Case No. 12-1398

DECLARATION OF PAUL O'BRIEN

I, PAUL O'BRIEN, hereby declare as follows:

1. I am the Vice President of Policy and Campaigns of Oxfam America ("Oxfam"). Oxfam is a nonprofit international development and relief organization dedicated to finding lasting solutions to poverty and related injustice. Any decision challenging the constitutionality of Section 1504 of the Dodd-Frank Act ("Section 1504") or further delaying its implementation will substantially injure Oxfam both in its core work advancing resource revenue



accountability worldwide, and in its rights as a shareholder in a number of resource extraction issuers.

2. As Vice President of Policy and Campaigns, it is my job to oversee all advocacy campaigns and help to develop and approve all policy positions that Oxfam adopts. Oxfam was a leader in the campaign to enact mandatory extractive payment disclosure legislation in the United States, and it has been an active participant in the Section 1504 rulemaking process. Oxfam submitted comments in response to the SEC's Proposed Rule to implement Section 1504, urging the adoption of an effective disclosure regime governing payments by resource extraction issuers to the Federal and foreign governments. Oxfam is also the Plaintiff in a pending lawsuit against the Securities and Exchange Commission, *Oxfam America v. SEC*, Civil Action No. 1:12-cv-10878 (D. Mass.), regarding the delay in implementing Section 1504.

Resource Revenue Accountability Work

3. A core mission of Oxfam is to advance resource revenue accountability around the world, engaging with resource extraction issuers, governments and international organizations, as well as with local communities and civil society organizations to promote responsible and accountable stewardship of revenues from extractive resources. This mission reflects Oxfam's core values and is integral to its activities and work around the world.

4. Ironically, many resource-rich developing economies experience lower growth and far greater poverty than their resource-poor neighbors. Profits from resource extraction are easily captured and often flow directly into the hands of corrupt officials. Therefore, the most resource-rich countries are often the least successful at translating oil and mineral reserves into roads, schools, clinics, or improved living standards. Instead, societies heavily dependent upon resource extraction usually have exceptionally low standards of living and unusually high rates of corruption, authoritarian government, ineffective governance, ethnic violence, and civil war. Oxfam's work on resource revenue accountability is intended to help combat this phenomenon, often referred to as the "resource curse."
5. Oxfam engages in a variety of activities designed to promote the rights of communities affected by oil, gas and mining activities in 13 countries across Africa, Asia, and Latin America, in which extractive resource revenues are often corruptly diverted or mismanaged in a way that reduces their contribution to poverty reduction and economic development. In seven of these countries, Oxfam has invested significant resources over the past seven years to bring more transparency and accountability to the management and use of government revenues derived from oil, gas and mining projects. In many such countries, little or no information is available regarding the payments that oil,



gas, and mining companies make in connection with the commercial development of extractive resources.

6. Oxfam has spent more than \$1.4 million during 2011-2012 on global programs related to extractive industries revenue transparency. These activities have included, among others, research on the availability of extractive industry payment information in select countries; supporting the establishment of civil society coalitions to advocate; and specific national level campaigns designed to improve legal and voluntary frameworks around payment transparency. For example, Oxfam has conducted research on mining revenues in Mali; gas revenues in Peru; and oil revenues in Ghana.
7. In the last five years, Oxfam has expended significant resources researching and publishing reports on natural resource revenues. These include *Hidden Treasure: In Search of Mali's Gold Mining Revenues* (2007), available at <http://www.oxfamamerica.org/publications/hidden-treasure>; *People, Power and Pipelines: Lessons from Peru in the Governance of Gas Production Revenues* (2010), available at <http://www.oxfamamerica.org/publications/people-power-and-pipelines>; and *Ghana's Big Test: Oil's Challenge to Democratic Development* (2009), available at <http://www.oxfamamerica.org/publications/ghanas-big-test>. Because the Disclosure Rule mandated by Section 1504 will require the public disclosure of much of the information Oxfam seeks through its advocacy work, Oxfam will be able to reduce the resources it has diverted to achieving resource

RB

revenue disclosures and use them instead for other activities to alleviate poverty and combat the resource curse.

8. Oxfam has also financially supported the establishment of civil society coalitions focused on transparency of extractive industry revenues in Ghana (the Civil Society Platform on Oil and Gas) as well as Cambodia (Cambodians for Resource Revenue Transparency). These coalitions both wrote to the SEC during the public comment period for Section 1504. See <http://www.sec.gov/comments/s7-42-10/s74210-125.pdf> and <http://www.sec.gov/comments/s7-42-10/s74210-135.pdf>.
9. In Ghana, Oxfam supported a legislative campaign by the Civil Society Platform on Oil and Gas designed to influence the Ghana Petroleum Revenue Management Act of 2011. This Act now requires the Government of Ghana to disclose payments received from oil companies. The Act also established the independent Public Interest and Accountability Committee, which is tasked with ensuring implementation of the Act.
10. In addition, Oxfam has supported the implementation of the voluntary Extractive Industries Transparency Initiative (EITI) by serving on the EITI global board and supporting the implementation of the initiative in such countries as Ghana, Mali, Burkina Faso, and Peru. The EITI relies on government political will to be transparent and is limited in its breadth and scope. Section 1504 disclosures will provide more detailed, timely, and regular



information in EITI implementing countries and valuable information in countries not subscribing to the voluntary initiative (such as Cambodia).

11. Timely implementation of Section 1504's disclosure requirements is crucial to Oxfam's mission of ensuring that government revenues from the extraction of natural resources are managed accountably, transparently, and in the public interest. Oxfam would rely heavily upon the disclosures mandated by the Section 1504 to advance its work in this area. Oxfam would, without limitation, use these disclosures to inform, educate, and train stakeholders from government, the private sector, civil society, and communities affected by extractive resource development in the transparent and accountable management of extractive resource revenues derived from projects in their countries and communities.
12. The required disclosures, beginning in 2014, will allow Oxfam and the local civil society groups it supports, to be more effective in the activities described above. For example, Cambodians for Resource Revenue Transparency have said that they will rely on Section 1504 disclosures to try to hold the Cambodian government accountable for the use of payments received from oil and mining companies. Oxfam will work with Cambodians for Resource Revenue Transparency to understand, analyze and use Section 1504 disclosures in their engagement and advocacy with the Cambodian government. In Ghana, Section 1504 disclosures will complement the disclosures under the Petroleum



Revenue Management Act and allow civil society, parliamentarians and journalists to cross-check payments reported as received. Additionally, Section 1504 project-level mining payment disclosures in Ghana will allow civil society groups, the Public Interest and Accountability Committee, and local government officials to verify whether the central government is making the required transfers of royalties to district governments. In Peru, the project-level disclosures required by Section 1504 will allow civil society groups and local government officials to verify that the required transfers of payments under the country's "canon minero" are happening and at the correct amounts.

13. Finally, Section 1504 disclosures will allow Oxfam to know and understand payments that are being made in countries that do not subscribe to the EITI or have strong local disclosure regimes. It is difficult to promote accountable management of extractive resource revenues in the absence of reliable information about such revenues.

Shareholder Rights and Governance

14. Oxfam also owns securities of several resource extraction issuers that would be subject to the Final Disclosure Rule. These resource extraction issuers include: Kosmos Energy Ltd. (U.S./Bermuda), AngloGold Ashanti Ltd. (South Africa), Barrick Gold Corp. (Canada), CNOOC Ltd. (China), Chevron Corp. (U.S.), and Newmont Mining Corp. (U.S.). Oxfam holds approximately \$3,000 in securities

for each of the above issuers. Access to the disclosures required by the Section 1504 would allow Oxfam to better assess investment risks associated with these and other resource extraction issuers' payments to governments, and to decide whether to invest in or divest itself of particular securities based on its desire to participate in shareholder governance actions with particular issuers. Oxfam intends to carefully review disclosures by such issuers for indications of investment and other forms of risk reflected in otherwise-undisclosed patterns of payments.

15. Oxfam is also an engaged and active shareholder. For example, in 2009 Oxfam filed a shareholder proposal with Chevron calling on the company to adopt a policy of disclosing payments to governments in every country of operation. In 2010, the proposal was presented to the Chevron board of directors and voted on at the Annual General Meeting. Investors representing more than 160 million shares (or more than \$10 billion in market value at the time) voted in favor of the proposal.

16. Information disclosed pursuant to the Final Disclosure Rule would significantly inform Oxfam's participation in the governance of the resource extraction issuers of which it is a shareholder. In addition, Oxfam would use these disclosures to advance and inform its mission of promoting resource revenue accountability; in fact, one of the principle reasons that Oxfam holds shares in resource extraction issuers is to advance that mission in its capacity as a

Handwritten signature or initials, possibly "RZ", located at the bottom right of the page.

shareholder. Such actions would include, without limitation, introduction of shareholder resolutions by Oxfam, as well as votes cast as a shareholder. Oxfam has a policy on shareholding that emphasizes holding enough securities to enable it to utilize these tools of shareholder governance – in particular, it maintains shares in excess of \$2,000 to ensure compliance with SEC rules excluding nominal shareholders from proposing resolutions. Without the disclosures mandated by Section 1504, Oxfam is hindered in its ability to carry out its goal of active participation in corporate governance as an informed and educated shareholder.

Further Delay Compounds Oxfam's Injury

17. The injury to Oxfam and its interests caused by the delay in implementation of Section 1504 is compounded by further delays. If the SEC had complied with the deadlines set by Congress, information required to be disclosed pursuant to Section 1504 would have been available to Oxfam in annual filings made by resource extraction issuers after April 17, 2012. Because the SEC delayed issuance of the rule by over one year, Oxfam will not have this information until issuers make their annual filings 150 days after their fiscal years end subsequent to September 30, 2013, or March 2014 at the earliest. Any further delay will likely push back reporting even further. Oxfam's core mission of



promoting resource revenue accountability will continue to be hampered for as long as the delay lasts, with consequent injury to Oxfam and its activities.

18. Oxfam has also been obliged to divert significant resources to efforts to hold the SEC to its obligations under Section 1504, including, without limitation, broad-based media, communications, and advocacy efforts directed at the final implementation of Section 1504. If the rule is suspended or otherwise delayed, Oxfam will have to continue expending resources to ensure full and timely implementation that it could otherwise use to promote resource revenue accountability and fight the resource curse. If, on the other hand, the rule is implemented according to schedule, Oxfam will be able to use these resources to engage with, educate, and train government, private sector, civil society, and community stakeholders to advance transparent and accountable management of extractive resource revenues. Equally, Oxfam will use the resources diverted to prepare and advance shareholder initiatives in furtherance of both its economic interests and its extractive resource accountability mission.

19. Oxfam's inability to access information that would otherwise be disclosed pursuant to Section 1504 is directly traceable to the continuing delay in implementation of Section 1504. Oxfam's injury can be redressed if the Court upholds Section 1504 and the regulations promulgated pursuant thereto, and if the Court denies or blocks any attempt to further delay or suspend the effectiveness of the Rule.



Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

October 24, 2012

A handwritten signature in black ink, appearing to read 'P. O'Brien', written over a horizontal line.

PAUL O'BRIEN